2C/102

(13)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Single Bench

M.C.C. No. 140 /2004

APPLICANT : Vinod Kumar Sharma, S/o Prahlad Prasad Dwivedi Occupation – Teacher R/o Behind Jiwaji Rice Mills Nehru Nagar, Bilaspur (C.G.).

P.R. No. 2562/04
Presented by Shri N.K. Shukla
dated 18/11/04

-VERSUS-

NON-APPLICANTS : Dr.S.K.Upadhyay, S/o Late Shri Anandilal Upadhyay, Occupation- Retd. Additional Director aged about 60 years, R/o 6 Indrapuri Colony Gwarighat, Jabalpur (M.P.)

Application on behalf of applicant for Restoration of Civil Revision No.354/2001 dismissed as withdrawn.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

आदेश पत्रक

मामला क्रमांक MCC 1401 सन् 2004

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	13.04.2006 Shri Rajeev Shrivastava, Advocate with Shri Indrasen Sahu, Advocate for the applicant. Shri Ashish Shrivastava, counsel for the non-applicant. Heard. In Civil Revision No.354/2001 on 04.11.2004 learned counsel for the applicant submitted that he had been instructed by his client to withdraw the petition, accordingly the Court dismissed the revision as withdrawn. Applicant filed the instant application for restoration of the Civil Revision dismissed on 04.11.2004 as withdrawn on the ground that on 03.11.2004 applicant had filed an application under Order XLI Rule 27 of the CPC, when learned counsel for the applicant was advancing his argument on application under Order XLI Rule 27 of the CPC, the counsel during the argument submitted to withdraw the said application; but due to some confusion, as a result of bonafide mistake, the Court passed the impugned order. Learned counsel for the non-applicant did not oppose the said facts. In factual matrix of the instant case, the provisions contained under Order XLVII of the CPC alone are applicable, therefore, if the applicant satisfies the conditions envisaged under Order XLVII of the CPC, his application can be allowed. The conditions are :-	

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(24)

आदेश पत्रक

मामला क्रमांक MCC 140 सन् 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

a) the discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order made;

b) on account of some mistake or error apparent on the face of the record;

c) for any other sufficient reasons.

Here, in the instant case, application has been filed on the ground that as a result of bonafide mistake the impugned order has been passed by this court.

From record of this Court, it is evident that on 03.10.2001, the case was admitted for hearing. The case was listed before the Court for hearing with a note dated 02.11.2004 written by AR (J) and was listed for 03.11.2004. The Office listed the case for further orders on M.(C.)P.No.607/2001 for stay, IA Nos.970/2004 and 972/2004 for urgent hearing. It is pertinent to mention here that till 02.11.2004, no application under Order XLI Rule 27 of the CPC was filed by the applicant. He filed the said application on 03.11.2004 before the AR (J). Therefore, neither that application was listed for hearing nor it was with the record on 04.11.2004 when the case was before the Court for hearing. Neither the applicant has any occasion to argue such application nor could have withdrawn that application which was

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आदेश पत्रक

मामला क्रमांक MCC 140/ सन् 2004

(25)

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	not at all before the Court. Hence, apparently, the grounds raised by the applicant are incorrect. The order passed by this Court on 04.11.2004 is not a result of any mistake or error apparent on the face of the record. When in so many words learned counsel for the applicant stating frankly that he had been instructed to withdraw the revision withdrew it; it cannot be assumed that any mistake either on the part of the counsel or on the part of the Court has been committed. The grounds mentioned by the applicant are not correct; that apart, no mistake or error apparent on the face of the record is present so as to enable this Court to recall its own order. In the result, M.C.C.No.140/2004 is dismissed. **Sd/-** **V.K. Shrivastava** **Judge**	

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